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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Plaintiff,

vs.

MICHAEL LAYTHORPE, an Individual;
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendant.

MICHAEL LAYTHORPE,

Counter-Claimant,

vs.

PROGRESSIVE DIRECT INSURANCE
COMPANY, DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Counter-Defendant.

CASE NO: 2:22-cv-00822-RFB-EJY

**STIPULATION AND ~~PROPOSED~~
ORDER TO EXTEND DISCOVERY
DEADLINES**

(SECOND REQUEST)

Defendant/Counter-Claimant, Michael Laythorpe, and Plaintiff/Counter-Defendant,
Progressive Direct Insurance Company, by and through their respective counsel of record, do hereby
stipulate to extend the remaining deadlines in the current scheduling order and discovery plan in
place in this matter for a period of ninety (90) days for the reasons explained herein.

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Pursuant to Local Rule IA 6-1(a), the parties hereby aver that this is the second such discovery extension requested in this matter. Discovery is scheduled to close July 3, 2023, and this Stipulation and [Proposed] Order is thus timely pursuant to Local Rule 26-3.

**DISCOVERY COMPLETED TO DATE PURSUANT
TO LR 26-3(a) -[CHRONOLOGICAL]**

1. The parties conducted the FRCP 26(f) Conference on October 10, 2022;
2. Defendant/Counter-Claimant served its Initial List of Witnesses and Documents on November 22, 2022;
3. Plaintiff/Counter-Defendant served by mail its Initial List of Witnesses and Documents on November 1, 2022. Defendant/Counter-Claimant did not receive the document and notified Plaintiff/Counter-Defendant by email on December 19, 2022. The document was re-served via email on December 20, 2022.
4. Plaintiff/Counter-Defendant served its Initial Expert Disclosure Statement on February 2, 2023;
5. Defendant/Counter-Claimant served his Initial Expert Disclosure Statement on February 2, 2023;
6. Defendant/Counter-Claimant served his First Supplemental List of Witnesses and Documents on February 7, 2023;
7. Deposition of Shabnam Salmani, Progressive adjuster, was taken on February 21, 2023;
8. Deposition of Jennifer Pearson, Progressive adjuster, was taken on February 22, 2023;
9. Defendant/Counter-Claimant served his initial set of Interrogatories, Requests for Admissions, and Requests for Production of Documents on March 3, 2023;
10. Plaintiff/Counter-Defendant served its initial set of Interrogatories and Requests for Production of Documents on March 3, 2023;
11. Defendant/Counter-Claimant served his Second Supplemental List of Witnesses and Documents on March 3, 2023;

12. Deposition of Defendant/Counter-Claimant, Michael Laythorpe, was taken on March 6, 2023;
13. Defendant/Counter-Claimant served his Designation of Rebuttal Expert Witnesses on March 6, 2023;
14. Plaintiff/ Counter-Defendant served its Designation of Rebuttal Expert Witnesses on March 6, 2023;
15. Deposition of Plaintiff/Counter-Defendant's Expert David H. Paige was taken on March 21, 2023;
16. Deposition of Defendant/Counter-Claimant's Expert Hugh Black was taken on March 22, 2023;
17. Defendant/Counter-Claimant served his Third Supplemental List of Witnesses and Documents on April 12, 2023;
18. Plaintiff/ Counter-Defendant served its discovery responses on April 17, 2023;
19. Defendant/Counter-Claimant served his discovery responses on April 17, 2023;
20. Defendant/Counter-Claimant served his Fourth Supplemental List of Witnesses and Documents on May 15, 2023;

MOTION PRACTICE COMPLETED TO DATE

1. Plaintiff/Counter-Defendant filed a Motion for Summary Judgment on January 5, 2023;
2. Defendant/Counter-Claimant filed his Response to Motion for Summary Judgment on January 26, 2023 and his Counter-Motion for Summary Judgment on January 27, 2023;
3. Plaintiff/Counter-Defendant filed its Reply in support of Motion for Summary Judgment on February 6, 2023 and its Response to Counter-Motion for Summary Judgment on February 13, 2023;
4. Defendant/Counter-Claimant filed his Reply in support of Counter-Motion for Summary Judgment on February 27, 2023;

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**DISCOVERY TO BE COMPLETED PURSUANT TO
LR-26-3(b) [CHRONOLOGICAL]**

1. Deposition of Progressive's NRCP 30(b)(6) Person(s) With Knowledge initially scheduled for March 29, 2023, and postponed following Plaintiff/Counter-Defendant's objection to topics set forth in the Notice of Deposition, and other employees' depositions thereafter as may be necessary;
2. Depositions of Defendant/Counter-Claimant's treating physicians, including surgeons who reside in Colorado;
3. Deposition of Stuart Kaplan, M.D., who performed a medical records review and medical examination of Defendant/Counter-Claimant at the request of CCMSI in connection with the pending workers' compensation claim;
4. Supplemental written discovery as may be necessary.

REASONS FOR EXTENSION PURSUANT TO LR 26-3(c)

As the Court is aware, Defendant/Counter-Claimant underwent a spinal fusion on March 10, 2023. On April 14, 2023 Defendant/Counter-Claimant underwent a right shoulder arthroscopic surgery with extensive debridement. Medical records have been ordered but not all records have been received. In addition, following receipt of the relevant records, the depositions of his surgeons may be necessary as well. Plaintiff/Counter-Defendant identified David J. Oliveri, M.D., as a Rebuttal Expert Witness on March 6, 2023. Dr. Oliveri conducted a review of Defendant/Counter-Claimant's medical records. The deposition of Dr. Oliveri may also be necessary.

The parties are currently involved in a discovery dispute regarding the production of portions of the claims file that will need to be addressed by the Court and ruled on prior to the Rule 30(b)(6) deposition, as the contested documents are part of the topics listed in the Rule 30(b)(6) notice to which Plaintiff/Counter-Defendant has objected. Plaintiff/Counter-Defendant has produced its Claims Notes for this claim but redacted various Notes on the basis of attorney-client and work product privilege. Defendant/Counter-Claimant contends the redacted Notes are discoverable. Plaintiff/Counter-Defendant has advised that it will proceed with filing a Motion for Protective Order.

[PROPOSED] NEW DISCOVERY DEADLINES PURSUANT TO LR 26-3(d)

EXPERT DISCLOSURE DEADLINE..... PASSED

REBUTTAL DISCLOSURE DEADLINE..... PASSED

DISCOVERY DEADLINE October 2, 2023

DISPOSITIVE MOTION DEADLINE..... November 1, 2023

JOINT PROPOSED PRETRIAL ORDER..... December 1, 2023

If this extension is granted, all anticipated additional discovery should be concluded within the stipulated extended deadlines. This request is made in good faith and not for the purpose of delay.

DATED this 24th day of May, 2023

DATED this 24th day of May, 2023

MOUNTAIN WEST LAWYERS

KEATING LAW GROUP

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IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: May 24, 2023